HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1160 (M/S) 2006

1. Mamchand S/o Nand Ram,
2. Badrish Kumar S/o late Kewal,
3. Ram Daie W/o late Kewal,
4. Km. Babli D/o late Kewal,
   All resident of village Tassipur,
   Pargana Bhagwanpur, Tehsil Roorkee,
   District Haridwar,
5. Smt. Meena W/o Dheer Singh,
   D/o late Kewal, resident of Village Binarsi,
   Pargana Bhagwanpur, Tehsil Roorkee,
   District Haridwar,
6. Smt. Baby W/o Sri Vinod D/o late Kewal,
   Resident of village Churiyala Pargana Bhagwanpur,
   Tehsil Roorkee, District Haridwar. -- Petitioners.

Versus

1. Shish Ram,
2. Preetam,
3. Brijesh,
4. Mohara,
   All Sons of Sri Nathu,
   Resident of Village Tassipur,
   Pargana Bhagwanpur, Tehsil Roorkee,
   District Haridwar. --Respondents.

Sri Arvind Kumar Sharma, learned counsel for the petitioners,
Sri Harendra Belwal, learned Standing Counsel for the State.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Arvind Kumar Sharma, learned counsel for the petitioners and Sri Harendra Belwal, learned Standing Counsel for the State.

The present writ petition has been filed for the following reliefs:-

i. Issue a writ, order or direction in the nature of certiorari quashing the order dated 26.07.2006 passed by Additional District Judge/I Fast Track Court, Roorkee, District Haridwar (contained as annexure no. 5 to the writ petition),

ii. Issue any other order or direction, which be deemed fit and proper under the facts and circumstances of the case in favour of the petitioners,

iii. Award cost of the petition to the petitioners.

Brief facts, as narrated in the writ petition, are that the plaintiff/petitioners have filed a suit for possession over the land in dispute and ejectment of the respondents from the land in question. The said suit was numbered as Civil Suit no. 177 of 1984 Kewal and others vs. Nathu and others. After exchange of the pleadings, the trial Court fixed the date in the suit as 15.07.1991. On 15.07.1991 i.e. on the date fixed, the suit was dismissed in default of the plaintiff/petitioners.

The plaintiffs thereafter, filed restoration application on 16.03.1992 under Order-9 Rule 9 of the Code of Civil Procedure bearing misc. application no. 29/1992, which was allowed on 29.01.2004 imposing cost of Rs. 500/-. Aggrieved with the order passed by the trial Court allowing the restoration application, the defendant/ respondents filed revision before the District Judge, Haridwar, which was ultimately allowed by the Addl. District Judge/Ist Fast Track Court, Roorkee, District Haridwar on 26.07.2006. The Revisional Court wile allowing the revision has remanded the matter back to the trial Court with a direction to pass order on the restoration application on merits. It was held by the Revisional Court that while allowing the restoration application no reasons have been recorded by

the trial Court for the absence of the plaintiffs on the date fixed, which is required under Order-9 Rule 9 of the Code of Civil Procedure.

Having heard learned counsel for the petitioner and perusing of the order dated 26.07.2005 passed by the Addl. District Judge/Ist Track Court, Roorkee, I do not find any illegality or perversity in the order impugned. The Addl. District Judge, while allowing the revision, has merely remanded the matter back to the trial Court with the directions to take decision on the restoration application on its merit. The writ petition lacks merit and is liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs.

The stay application no. 11020/2006 stands disposed of.

(M.M. Ghildiyal, J.)

August 29, 2006:
NCM: